

# KRIEG · DEVAULT <sup>LLP</sup>

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### FAX COVER PAGE

DATE: September 21, 2007

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TO: Examiner Pedro Philogene, Group Art Unit 3733  
COMPANY: U.S. Patent and Trademark Office

FAX NUMBER: 571-273-8300  
PHONE NUMBER:

FROM: Douglas A. Collier

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FAX NUMBER: (317) 636-1507

RE: Response to Office Action for U.S. Patent Application No. 10/792,358 to Charles L. Branch et al.

COMMENTS: I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 571-273-8300 on:

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Douglas A. Collier  
Name of Registered Representative

*Douglas A. Collier*  
Signature

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KD\_TM-1135645\_1.DOC

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

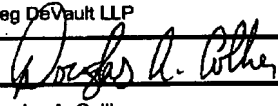
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|   |                        |                          |
|---|------------------------|--------------------------|
| <b>TRANSMITTAL FORM</b><br><br>(to be used for all correspondence after initial filing) | Application Number     | 10792,358                |
|   | Filing Date            | March 3, 2004            |
|   | First Named Inventor   | Charles L. Branch et al. |
|   | Art Unit               | 3733                     |
|   | Examiner Name          | Pedro Philogene          |
| Total Number of Pages in This Submission  | Attorney Docket Number | MSDI-90/PC689.02         |

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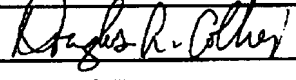
| ENCLOSURES (Check all that apply)  |  |  |
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| <input checked="" type="checkbox"/> Fee Transmittal Form<br><input checked="" type="checkbox"/> Fee Attached<br><input checked="" type="checkbox"/> Amendment/Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Statement<br><br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Reply to Missing Parts/Incomplete Application<br><input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation<br><input type="checkbox"/> Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____<br><input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC<br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):<br>Fax Cover Sheet |
| Remarks  |  |  |

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

|              |   |          |        |
|--------------|---|----------|--------|
| Firm Name    | Krieg DeVault LLP   |          |        |
| Signature    |  |          |        |
| Printed name | Douglas A. Collier  |          |        |
| Date         | September 21, 2007  | Reg. No. | 43,556 |

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

|                       |   |      |                    |
|-----------------------|---|------|--------------------|
| Signature             |  |      |                    |
| Typed or printed name | Douglas A. Collier  | Date | September 21, 2007 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (12-04v2)

Approved for use through 07/31/2008, OMB 0651-0032

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**FEE TRANSMITTAL**  
**For FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 200.00**Complete if Known**

Application Number 10/792,358  
 Filing Date March 3, 2004  
 First Named Inventor Charles L. Branch  
 Examiner Name Pedro Philogene  
 Art Unit 3733  
 Attorney Docket No. MSDI-90/PC689.02

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SEP 21 2007**METHOD OF PAYMENT (check all that apply)**

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):  
☒ Deposit Account Deposit Account Number: 12-2424 Deposit Account Name: Krieg DeVault Lundy

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee  
☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

| Application Type | FILING FEES |                       | SEARCH FEES |                       | EXAMINATION FEES |                       | Fees Paid (\$) |
|------------------|-------------|-----------------------|-------------|-----------------------|------------------|-----------------------|----------------|
|                  | Fee (\$)    | Small Entity Fee (\$) | Fee (\$)    | Small Entity Fee (\$) | Fee (\$)         | Small Entity Fee (\$) |                |
| Utility          | 300         | 150                   | 500         | 250                   | 200              | 100                   | 0.00           |
| Design           | 200         | 100                   | 100         | 50                    | 130              | 65                    |                |
| Plant            | 200         | 100                   | 300         | 150                   | 160              | 80                    |                |
| Reissue          | 300         | 150                   | 500         | 250                   | 600              | 300                   |                |
| Provisional      | 200         | 100                   | 0           | 0                     | 0                | 0                     |                |

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

| Fee (\$) | Small Entity Fee (\$) |
|----------|-----------------------|
| 50       | 25                    |
| 200      | 100                   |
| 360      | 180                   |

**Total Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**  
 51 - 51 or HP = 0 x 50.00 = 0.00

HP = highest number of total claims paid for, if greater than 20.

**Indep. Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**  
 5 - 4 or HP = 1 x 200.00 = 200.00

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

**Total Sheets** **Extra Sheets** **Number of each additional 50 or fraction thereof** **Fee (\$)** **Fee Paid (\$)**  
 - 100 = / 50 = (round up to a whole number) x =

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge):

|                          |                           |                         |                                |
|--------------------------|---------------------------|-------------------------|--------------------------------|
| <b>SUBMITTED BY</b>      |                           | <b>Registration No.</b> | <b>Telephone</b>               |
| <b>Signature</b>         | <i>Douglas A. Collier</i> | 43,556                  | 317-636-4341                   |
| <b>Name (Print/Type)</b> | Douglas A. Collier        | <b>(Attorney/Agent)</b> | <b>Date</b> September 21, 2007 |

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                                |   |                     |
|--------------------------------|---|---------------------|
| In re U.S. Patent Application: | ) | Before the Examiner |
|                                | ) | Pedro Philogene     |
| Charles L Branch, et al.       | ) |                     |
|                                | ) | Group Art Unit:     |
| Serial No. 10/792,358          | ) | 3733                |
|                                | ) |                     |
| Filed: March 3, 2004           | ) | Atty Docket No.:    |
|                                | ) | MSDI-90/PC689.02    |
| INSTRUMENTS AND METHODS FOR    | ) |                     |
| MINIMALLY INVASIVE TISSUE      | ) | September 21, 2007  |
| RETRACTION AND SURGERY         | ) |                     |

**RESPONSE TO NON-FINAL OFFICE ACTION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Non-Final Office Action mailed June 27, 2007, please consider the following. The fee for one additional independent claim is enclosed herewith. No additional fees or extensions or time are believed due for consideration of the enclosed. However, please provide any extensions of time which may be necessary and charge any additional fees due to Deposit Account 12-2424, but not including the payment of issue fees.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 571-273-8300 on:

Sept. 21, 2007  
(Date of Transmission)

Douglas A. Collier  
Name of Registered Representative

*Douglas A. Collier*  
Signature

Sept. 21, 2007  
Date of signature

Response to Office Action  
Ser. No. 10/792,358  
Atty Docket No. MSDI-90/PC689.02  
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